

SINHA LAW

OCT 10 2017

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September 30, 2017

Via Hand Delivery

Tom and Martha Bodell, Owners
North Coast Tile & Stone
3854 Santa Rosa Avenue
Santa Rosa, CA 95407

Greg Cassell, Owner
North Coast Tile & Stone
5900 Pruitt Avenue, Suite 170
Windsor, CA 95492

John Caletti
Lessor for North Coast Tile & Stone
Shiloh Oaks, LLC
5892 Pruitt Avenue
Windsor, CA 95492

Marlon V. Young
Shiloh Oaks Co LLC Agent for Service of Process
3554 Round Barn Blvd #303
Santa Rosa, CA 95403

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of North Coast Tile
& Stone:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the North Coast Tile & Stone facility located at 5900 Pruitt Avenue, Suite 170 in Windsor, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this 60-day Notice of violations ("Notice") is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California North Coast Regional Water Quality Control Board ("RWQCB").

CEPA is a Sonoma County-based environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Pruitt Creek, the Laguna de Santa Rosa and the Russian River (which is listed as impaired for sediment, temperature, and bacteria under CWA §303(d)).

North Coast Tile & Stone (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast RWQCB Water Quality Control Plan or "Basin Plan".

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

The Discharger's operations (as outlined in Section II below) require it to apply for NDPES coverage for its Windsor facility, which it has leased from Shiloh Oaks Company, LLC since July 1, 2012. However, as of the date of this Notice, North Coast Tile & Stone has failed to apply for NDPES coverage.

The Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p).

II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Facility Operations

The primary operations at the North Coast Tile & Stone Facility in Windsor include marble and granite manufacturing, including Custom Stone Fabrication Services. Facility operations are covered under Standard Industry Classification (SIC) 3281 – Cut Stone and Stone Products, which is applicable to establishments primarily engaged in cutting, shaping and finishing granite, marble, limestone, slate and other stone for building and miscellaneous uses, such as is North Coast Tile & Stone's Windsor facility's primary operations. A copy of a formal definition of SIC Code 3281 – Cut Stone and Stone Products, derived from the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) website is attached as **Exhibit 1**.

Facility operations take place primarily outdoors on a site that discharges indirectly into Pruitt Creek and the Laguna de Santa Rosa, and eventually enters the navigable waters of the Russian River, all of which are in proximity to the Facility. Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice can indirectly discharge to the Russian River.

B. North Coast Tile & Stone's Specific Violations

1. Failure to apply for an NPDES Permit

The CWA prohibits storm water discharges without a permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.26. The General Permit regulates operators of facilities subject to coverage under the National Pollutant Discharge Elimination System ("NPDES") storm water permit, as these operators discharge storm water associated with specific industrial activities identified by both industrial activity and SIC ("Standard Industrial Classification") codes in Attachment A of the General Permit. A copy of Attachment A is included with this Notice as **Exhibit 2**.

As stated above, North Coast Tile & Stone's primary industrial activity for its Windsor facility is Cut Stone & Stone Products (granite fabrication), and its corresponding SIC code is 3281, which is listed in Attachment A as an industrial activity covered by the NPDES permit. Thus, North Coast Tile & Stone is required to apply for coverage under the Permit in order to continue its business operations, pursuant to Section I.Q of the General Permit.

As of the date of this Notice, North Coast Tile & Stone has failed to apply for coverage under the General Permit, and has been operating without an NPDES permit at the Windsor facility since July 1, 2012. Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code and is grounds for enforcement action against the Facility and is further a violation of Sections I. and II.B.1.b. of the General Permit.

2. *Nonexistent SWPPP*

North Coast Tile & Stone is also in violation of Section X of the General Permit for failure to prepare a current and adequate Storm Water Pollution Prevention Plan (“SWPPP”) for the Facility.

The minimum mandatory elements that must be included in a SWPPP pursuant to Section X of the General Permit are as follows:

- facility name and contact information,
- facility specific site map,
- list of industrial materials utilized by the facility,
- description of Potential Pollution Sources,
- assessment of Potential Pollutant Sources,
- identification of all sources of NSWs at the site,
- description of erodible surfaces at the Facility site,
- minimum BMPs,
- advanced BMPs (if applicable),
- information regarding the Facility’s Pollution Prevention Team,
- Monitoring Implementation Plan,
- Annual Comprehensive Facility Compliance Evaluation information,
- scheduled facility operating hours,
- the date that the SWPPP was initially prepared and,
- the date of each SWPPP amendment, if applicable.

North Coast Tile & Stone has failed to upload a SWPPP into the California EPA’s State Water Resources Control Board’s Storm Water Multiple Application and Report Tracking System (“SMARTS”) by the deadline of July 1, 2015.

3. *Failure to Collect and Analyze Storm Water Samples Pursuant to the General Permit*

The Discharger has failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

A Qualifying Storm Event (QSE) is a precipitation event that produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

Furthermore, Section XI.B.11.a requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within thirty (30) days of obtaining all results for each sampling event. Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload any storm water run-off samples into the SMARTS database system, as it has not yet applied for coverage under the General Permit. Thus, it is in violation for missing four (4) QSEs for each of the following time periods: fiscal years ending June 30, 2013, June 30, 2014, June 30, 2015, June 30, 2016 and June 30, 2017.

4. Failure to File Annual Reports

Pursuant to Section XVI.A of the General Permit, all Dischargers must certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year [July 1 through June 30 of each year], using the standardized format and checklists contained within the SMARTS database system.

As of the date of this Notice, North Coast Tile & Stone has failed to upload an Annual Reports for the fiscal years ending June 30, 2013, June 30, 2014, June 30, 2015, June 30, 2016 and June 30, 2017.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility is located near Pruitt Creek and the Laguna de Santa Rosa Watershed, tributaries of the Russian River – all waters of the United States. The Russian River is listed under the CWA as impaired for Nutrients (D.O., Nitrogen, Phosphorous), Pathogens (Indicator Bacteria), Metals (Mercury), Misc. (Temperature), and Sediment (Siltation). Receiving water concerns for the Facility are for sediment, which is analyzed as TSS (suspended sediment). All illegal discharges and activities described in this Notice occur in close proximity to the above-identified waters. During storm events, the discharges are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, specifically the Russian River, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entity responsible for the alleged violations is North Coast Tile & Stone (“the Discharger”), including its parent companies, owners, operators and employees responsible for compliance with the CWA.

IV. THE LOCATION OF THE VIOLATIONS

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is North Coast Tile & Stone’s permanent facility address of 5900 Pruitt Avenue, Suite 170 in Windsor, California, and includes the adjoining navigable waters of Pruitt Creek, the Laguna de Santa Rosa Watershed and the Russian River, respectively – all waters of the United States.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2013, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is the California Environmental Protection Association (“CEPA”).

To ensure proper response to this Notice, all communications should be addressed as follows:

Xhavin Sinha, Attorney for
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1645 Willow Street, #150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

VII. PENALTIES

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Russian River. Members of CEPA use the Russian River for

recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.


CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosures

Exhibit 1: SIC Code 3281 Definition pursuant to US Dept of Labor-OSHA website
Exhibit 2: Attachment A – List of Industries Covered by the Industrial General Permit

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60-Day Notice of Intent to Sue
September 30, 2017
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Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

SIC Code 3281 Cut Stone and Stone Products

Industry

Manufacturing

Description

Establishments primarily engaged in cutting, shaping, and finishing granite, marble, limestone, slate, and other stone for building and miscellaneous uses.

Cross References

Establishments primarily engaged in buying or selling partly finished monuments and tombstones, but performing no work on the stones other than lettering, finishing, or shaping to custom order, are classified in Division F, Wholesale Trade or Division G, Retail Trade. The cutting of grindstones, pulpstones, and whetstones at the quarry is classified in Division B, Mining.

Illustrative Examples

- Altars, cut stone
- Baptismal fonts, cut stone
- Benches, cut stone
- Blackboards, slate
- Burial vaults, stone
- Church furniture, cut stone
- Curbing, granite and stone
- Cut stone products
- Desk set bases, onyx
- Dimension stone for buildings
- Flagstones
- Furniture, cut stone
- Granite, cut and shaped
- Lamp bases onyx
- Limestone, cut and shaped
- Marble, building cut and shaped
- Monuments, cut stone: not including only finishing or lettering
- Paving blocks, cut stone
- Pedestals, marble
- Pulpits, cut stone
- Roofing, slate
- Slate and slate products
- Statuary, marble
- Stone, cut and shaped
- Stone, quarrying and processing of own
- Stone products
- Switchboard panels, slate
- Table tops, marble
- Tombstones, cut stone: not including only finishing or lettering
- Urns, cut stone
- Vases, cut stone

ATTACHMENT A

FACILITIES COVERED BY NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES (GENERAL PERMIT)

1. Facilities Subject To Storm Water Effluent Limitations Guidelines, New Source Performance Standards, or Toxic Pollutant Effluent Standards Found in 40 Code of Federal Regulations, Chapter I, Subchapter N (Subchapter N):

Cement Manufacturing (40 C.F.R. Part 411); Feedlots (40 C.F.R. Part 412); Fertilizer Manufacturing (40 C.F.R. Part 418); Petroleum Refining (40 C.F.R. Part 419); Phosphate Manufacturing (40 C.F.R. Part 422); Steam Electric (40 C.F.R. Part 423); Coal Mining (40 C.F.R. Part 434); Mineral Mining and Processing (40 C.F.R. Part 436); Ore Mining and Dressing (40 C.F.R. Part 440); Asphalt Emulsion (40 C.F.R. Part 443); Landfills (40 C.F.R. Part 445); and Airport Deicing (40 C.F.R. Part 449).

2. Manufacturing Facilities:

Facilities with Standard Industrial Classifications (SICs) 20XX through 39XX, 4221 through 4225. (This category combines categories 2 and 10 of the previous general permit.)

3. Oil and Gas/Mining Facilities:

Facilities classified as SICs 10XX through 14XX, including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 Code of Federal Regulations. 434.11(1) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Acts authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations. Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined material; or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

4. Hazardous Waste Treatment, Storage, or Disposal Facilities:

Hazardous waste treatment, storage, or disposal facilities, including any facility operating under interim

status or a general permit under Subtitle C of the Federal Resource, Conservation, and Recovery Act.

5. Landfills, Land Application Sites, and Open Dumps:

Landfills, land application sites, and open dumps that receive or have received industrial waste from any facility within any other category of this Attachment; including facilities subject to regulation under Subtitle D of the Federal Resource, Conservation, and Recovery Act, and facilities that have accepted wastes from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance).

6. Recycling Facilities:

Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.

7. Steam Electric Power Generating Facilities:

Any facility that generates steam for electric power through the combustion of coal, oil, wood, etc.

8. Transportation Facilities:

Facilities with SICs 40XX through 45XX (except 4221-25) and 5171 with vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified under this Permit as associated with industrial activity.

9. Sewage or Wastewater Treatment Works:

Facilities used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge, that are located within the confines of the facility, with a design flow of one million gallons per day or more, or required to have an approved pretreatment program under 40 Code of Federal Regulations part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act.